

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.) CASE NO. 4:23-cr-00003-SLG
)
 JUNIOR GUFATASI TULALI,)
)
 Defendant.)
)

TRANSCRIPT OF TRIAL BY JURY - TRIAL DAY 5
BEFORE THE HONORABLE SHARON L. GLEASON, DISTRICT JUDGE
Friday - April 19, 2024
8:33 a.m. - 5:26 p.m.
Fairbanks, Alaska

FOR THE GOVERNMENT:

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Transcript Produced from the Stenographic Record

1 (Call to Order of the Court at 8:30 a.m.)

2 (Jury absent)

3 DEPUTY CLERK: All rise. Her Honor, the Court, the
4 United States District Court for the District of Alaska is now
5 in session, the Honorable Sharon L. Gleason presiding.

6 Please be seated.

7 THE COURT: Good morning, everyone. We're on record
8 without the jury present here. And anything from the
9 government to take up at this point?

10 MS. WEBER: Yes, Your Honor. For the Aimee Ludwick
11 911 call, we played only a few seconds of it, but the entire
12 call is in evidence. Because we did not end up presenting
13 evidence about the overdose of Evan Slongwhite, the government
14 wanted to know whether or not we'd be permitted to play a
15 longer version of the call that's in evidence or if we're only
16 allowed to admit that clip.

17 THE COURT: Thank you for asking me that outside the
18 presence of the jury. If it's admitted in evidence, which I
19 hear it is, then any portion can be played during your
20 45 minutes.

21 MS. WEBER: Thank you.

22 THE COURT: Did you have demonstratives, either side,
23 that were not admitted in evidence that you intend to use
24 during closing?

25 MS. VOSACEK: I do, Your Honor.

1 THE COURT: Have you showed those to Mr. Camiel?

2 MS. VOSACEK: I can. Yes, I can show him.

3 THE COURT: I think that would be helpful, so we can
4 avoid any objections during closing. If it's simply taking the
5 jury instructions that I sent you and putting those up, that's
6 fine. But if it's a PowerPoint that has other information,
7 generally runs smoother if he can see it first.

8 MS. VOSACEK: I'll show him my PowerPoint.

9 THE COURT: Anything else from the government?

10 MS. WEBER: The victim's family has requested that
11 when we get a jury note indicating they have reached a verdict,
12 if we can have, like, a 15-minute break to give them time to
13 come to court.

14 THE COURT: That's fine. We can do that.

15 Mr. Camiel, anything else?

16 MR. CAMIEL: No, Your Honor. My presentation would
17 only include either slides of the admitted exhibits or the
18 Court's instructions.

19 THE COURT: Very good. With that said, then, we'll
20 take a short break until we have all of our jurors.

21 DEPUTY CLERK: We have them all.

22 THE COURT: We have all our jurors. All right. Well,
23 then let's have Mr. Camiel just quickly review here, and then
24 let me know when we're ready to proceed or if there's any issue
25 there.

1 We'll go off record.

2 DEPUTY CLERK: All rise. This court now stands in a
3 brief recess.

4 (Recessed from 8:33 a.m. to 8:37 a.m.)

5 (Jury present)

6 DEPUTY CLERK: Please be seated.

7 (Pause)

8 DEPUTY CLERK: All rise. Her Honor, the Court, the
9 United States District Court is again in session.

10 Please be seated.

11 THE COURT: All right. Well, good morning, ladies and
12 gentlemen, and thank you all for being so timely. I'm going
13 to -- we're now at the next phase of our case, which is where
14 I'm going to give you some instructions on the applicable law.
15 Then we'll hear from the lawyers for each side in closing
16 arguments.

17 So I have asked -- I'll ask our courtroom deputy to
18 hand out the -- do you have these?

19 DEPUTY CLERK: I do.

20 THE COURT: She's going to hand out what are called
21 the preliminary closing jury instructions. This is the bulk of
22 the instructions that I'm going to read now. And then she'll
23 hand them out. You can read along with me if you'd like, or
24 simply listen, whichever is your preference.

25 So ladies and gentlemen, you should each have what's

1 entitled "Court's Preliminary Closing Jury Instructions," and
2 I'm going to read these through now.

3 Instruction one: Members of the jury, now that you
4 have heard all of the evidence, it's my duty to instruct you on
5 the law that applies to this case. You will each have a copy
6 of these instructions in the jury room for you to consult.

7 It's your duty to weigh and to evaluate all the
8 evidence received in the case and, in that process, to decide
9 the facts. It's also your duty to apply the law as I give it
10 to you to the facts as you find them, whether you agree with
11 the law or not. You must decide the case solely on the
12 evidence and the law. You will recall that you took an oath
13 promising to do so at the beginning of the case.

14 You should also not be influenced by any person's
15 race, color, religious beliefs, national ancestry, sexual
16 orientation, gender identity, gender, or economic
17 circumstances. Also, do not allow yourself to be influenced by
18 personal likes or dislikes, sympathy, prejudice, fear, public
19 opinion, or biases, including unconscious biases. Unconscious
20 biases are stereotypes, attitudes, or preferences that people
21 may consciously reject, but may be expressed with conscious
22 awareness, control, or intention.

23 You must follow all of these instructions and not
24 single out some and ignore others. They are all important.
25 Please don't read into these instructions or into anything I

1 may have said or done, any suggestion as to what verdict you
2 should return. That's a matter entirely up to you.

3 Instruction two: The indictment is not evidence. The
4 defendant has pleaded not guilty to the charge. The defendant
5 is presumed to be innocent unless and until the government
6 proves the defendant guilty beyond a reasonable doubt.

7 In addition, the defendant does not have to testify or
8 present any evidence. The defendant doesn't have to prove
9 innocence. The government has the burden of proving every
10 element of the charge beyond a reasonable doubt.

11 Instruction three: A defendant in a criminal case has
12 a constitutional right not to testify. In arriving at your
13 verdict, the law prohibits you from considering in any manner
14 that the defendant did not testify.

15 Instruction four: Proof beyond a reasonable doubt is
16 proof that leaves you firmly convinced the defendant is guilty.
17 It is not required that the government prove guilt beyond all
18 possible doubt. A reasonable doubt is doubt based upon reason
19 and common sense, and is not based purely on speculation. It
20 may arise from a careful and impartial consideration of all the
21 evidence or from lack of evidence. If after a careful and
22 impartial consideration of all the evidence you are not
23 convinced beyond a reasonable doubt the defendant is guilty,
24 it's your duty to find the defendant not guilty. On the other
25 hand, if after a careful and impartial consideration of all the

1 evidence you are convinced beyond a reasonable doubt that the
2 defendant is guilty, it is your duty to find the defendant
3 guilty.

4 Instruction five: The evidence you are to consider in
5 deciding what the facts are consists of:

6 First, the sworn testimony of any witness;

7 Second, the exhibits received in evidence;

8 And third, any facts to which the parties have agreed.

9 Instruction six: In reaching your verdict you may
10 consider only the testimony and exhibits received in evidence.
11 The following things are not in evidence, and you may not
12 consider them in deciding what the facts are:

13 One, questions, statements, objections, and arguments
14 by the lawyers are not evidence. The lawyers are not
15 witnesses. Although you must consider a lawyer's questions to
16 understand the answers of a witness, the lawyer's questions are
17 not evidence.

18 Similarly, what the lawyers have said in their
19 openings statements and what they'll say in their closing
20 arguments and have said at other times is intended to help you
21 interpret the evidence, but it is not evidence. If the facts
22 as you remember them differ from the way the lawyers state
23 them, your memory of them controls.

24 Second, any testimony that I have excluded, stricken,
25 or instructed you to disregard is not evidence. In addition,

1 some evidence was received only for a limited purpose. When I
2 have instructed you to consider certain evidence in a limited
3 way, you must do so.

4 Three, anything you may have heard or seen when the
5 court was not in session is not evidence. You are to decide
6 the case solely on the evidence received at the trial.

7 Instruction seven: Evidence may be direct or
8 circumstantial. Direct evidence is direct proof of a fact,
9 such as testimony by a witness about what that witness
10 personally saw or heard or did. Circumstantial evidence is
11 indirect evidence. That is, it is proof of one or more facts
12 from which you can find another fact. By way of example, if
13 you wake up in the morning and see that the sidewalk is wet,
14 you may find from that fact that it rained during the night.
15 However, other evidence, such as a turned-on garden hose may
16 provide an explanation for the water on the sidewalk.

17 Therefore, before you decide that a fact has been
18 proven by circumstantial evidence, you must consider all the
19 evidence in light of reason, experience and common sense.

20 You are to consider both direct evidence and
21 circumstantial evidence. Either can be used to prove any fact.
22 The law makes no distinction between the weight to be given to
23 either direct or circumstantial evidence. It's for you to
24 decide how much weight to give to any evidence.

25 Instruction eight: In deciding the facts in this

1 case, you may have to decide which testimony to believe and
2 which testimony not to believe. You may believe everything a
3 witness says or part of it or none of it. In considering the
4 testimony of any witness, you may take into account the
5 following:

6 First, the opportunity and ability of the witness to
7 see or hear or know the things testified to.

8 Second, the witness's memory.

9 Third, the witness's manner while testifying.

10 Fourth, the witness's interest in the outcome of the
11 case, if any.

12 Fifth, the witness's bias or prejudice, if any.

13 Sixth, whether other evidence contradicted the
14 witness's testimony.

15 Seventh, the reasonableness of the witness's testimony
16 in light of all the evidence.

17 And eighth, any other factors that bear on
18 believability.

19 Sometimes a witness may say something that's not
20 consistent with something else he or she said. Sometimes
21 different witnesses will give different versions of what
22 happened. People often forget things or make mistakes in what
23 they remember. Also, two people may see the same event but
24 remember it differently. You may consider these differences,
25 but do not decide the testimony is untrue just because it

1 differs from other testimony.

2 However, if you decide that a witness has deliberately
3 testified untruthfully about something important, you may
4 choose not to believe anything that witness said. On the other
5 hand, if you think the witness testified untruthfully about
6 some things but told the truth about others, you may accept the
7 part you think is true and ignore the rest.

8 The weight of the evidence as to a fact does not
9 necessarily depend on the number of witnesses who testify.
10 What's important is how believable the witnesses were and how
11 much weight you think their testimony deserves.

12 Instruction nine: You have heard evidence that the
13 defendant may have committed other acts not charged here. You
14 may not consider this evidence as evidence of guilt of the
15 crime for which the defendant is now on trial.

16 Instruction ten: You have heard evidence that
17 Andre Brown, a witness, was previously convicted of felony
18 misconduct involving a controlled substance and felony
19 distribution of fentanyl resulting in death. You may consider
20 this evidence in deciding whether or not to believe this
21 witness and how much weight to give to the testimony of this
22 witness.

23 You have also heard evidence that Winston Crockett, a
24 witness, was previously convicted of felony distribution of a
25 controlled substance. You may consider this evidence in

1 deciding whether or not to believe this witness and how much
2 weight to give to the testimony of this witness.

3 Instruction 11: You have heard testimony from
4 Winston Crockett and Andre Brown, witnesses who received
5 benefits from the government in connection with this case and
6 were alleged to be accomplices to the crime charged. An
7 accomplice is one who voluntarily and intentionally joins with
8 another person in committing a crime or who pleaded guilty to a
9 crime arising out of the same events for which the defendant is
10 on trial. These guilty pleas are not evidence against the
11 defendant, and you may consider it only in determining these
12 witnesses' believability.

13 For these reasons, in evaluating the testimony of
14 Winston Crockett and Andre Brown, you should consider the
15 extent to which or whether their testimony may have been
16 influenced by any of these factors. In addition, you should
17 examine the testimony of Winston Crockett and Andre Brown with
18 greater caution than that of other witnesses.

19 Instruction 12: You've heard testimony from four
20 individuals, Son Hoang, Kelsey Roberts, Scott Larson, and
21 Cristin Rolf, who testified to their opinions and the reasons
22 for his or her opinion. This opinion testimony is allowed
23 because of the education or experience of these witnesses.
24 Such opinion testimony should be judged like any other
25 testimony. You may accept it or reject it and give it as much

1 weight as you think it deserves considering the witness's
2 education and experience, the reasons given for the opinion,
3 and all the other evidence in the case.

4 Instruction 13: You are here only to determine
5 whether the defendant is guilty or not guilty of the charge in
6 the indictment. The defendant is not on trial for any conduct
7 or offense not charged in the indictment.

8 Instruction 14: The defendant is charged in Count 1
9 of the indictment with distribution of fentanyl resulting in
10 death, in violation of Sections 841(a)(1) and B(1)(c) of
11 Title 21 of the United States Code. For the defendant to be
12 found guilty of that charge, the government must prove each of
13 the following elements beyond a reasonable doubt.

14 First, between on or about October 13, 2020 and
15 October 17, 2020, within the District of Alaska and elsewhere,
16 the defendant knowingly and intentionally distributed fentanyl.

17 Second, the defendant knew it was fentanyl or some
18 other federally controlled substance.

19 Distributing means delivering or transferring
20 possession of fentanyl to another person with or without any
21 financial interest in that transaction.

22 The government is not required to prove the amount or
23 quantity of fentanyl. It need only prove beyond a reasonable
24 doubt that there was a measurable or detectable amount of
25 fentanyl.

1 It does not matter whether the defendant knew that the
2 substance was fentanyl. It is sufficient that the defendant
3 knew that it was some kind of a federally controlled substance.

4 Instruction 15: A person has possession of something
5 if the person knows of its presence and has physical control of
6 it or knows of its presence and has the power and intention to
7 control it.

8 Instruction 16: An act is done knowingly if the
9 defendant is aware of the act and doesn't act through
10 ignorance, mistake, or accident. The government is not
11 required to prove that the defendant knew that his acts or
12 omissions were unlawful. You may consider evidence of the
13 defendant's words, acts, or omissions, along with all the other
14 evidence in deciding whether the defendant acted knowingly.

15 Instruction 17: If you find that the defendant is
16 guilty of distributing fentanyl, then you must determine
17 whether Jacob Lee's death was a result of the fentanyl
18 distributed by the defendant. To find that a drug resulted in
19 death, you must unanimously and beyond a reasonable doubt find
20 that but for the use of the fentanyl that the defendant
21 distributed, Jacob Lee would not have died.

22 In deciding whether use of the fentanyl that the
23 defendant distributed resulted in death, you are instructed
24 that the government must prove beyond a reasonable doubt that
25 the use of the fentanyl was either a but-for cause of death or

1 an independently sufficient cause of death. The government
2 need not prove both alternatives; either is sufficient.

3 To find a particular controlled substance distributed
4 or dispensed by the defendant was a but-for cause of death, you
5 must find beyond a reasonable doubt that but for the decedent's
6 house of the fentanyl, the decedent would have lived.

7 For example, where A shoots B, who was hit and dies,
8 we can say that A's conduct was a but-for cause of B's death
9 since, but for A's conduct, B would not have died. The same
10 thing is true if a person's act combines with other factors to
11 produce the result, so long as the other factors alone would
12 have not produced the result if, so to speak, the person's act
13 was the straw that broke the camel's back. Thus, if poison is
14 administered to a man debilitated by multiple diseases, the
15 poison is a but-for cause of his death even in those diseases
16 played a part in his demise, so long as, without the
17 incremental effect of the poison, he would not have died at
18 that time.

19 To find that a particular controlled substance
20 distributed or dispensed by the defendant was an independently
21 sufficient cause of death, you must find beyond a reasonable
22 doubt that the decedent's use of the fentanyl was sufficient to
23 cause the decedent's death regardless of, for example, the
24 decedent's use of any other controlled substances.

25 For example, if A stabs B, inflicting a fatal wound,

1 while at the same moment X, acting independently, shoots B in
2 the head, also inflicting a fatal wound, and B dies from the
3 combined effects of the two wounds, A's conduct is an
4 independently sufficient cause of B's death, even though A's
5 conduct was not a but-for cause of B's death, since B would
6 have died from X's actions in any event.

7 The government does not have the burden of
8 establishing that the defendant intended that death result from
9 the use of fentanyl, nor does the government have the burden of
10 establishing that the defendant knew or should have known that
11 death would result from the distribution or ingestion of the
12 fentanyl.

13 Instruction 18: The indictment charges that the
14 offense alleged was committed on or about a certain date.
15 Although it is necessary for the government to prove beyond a
16 reasonable doubt that the offense was committed on a date
17 reasonably near the date alleged in the indictment, it is not
18 necessary for the government to prove that the offense was
19 committed precisely on the date charged.

20 And finally, instruction 19: A verdict form has been
21 prepared for you. You will each receive your own copy of the
22 verdict form, but the goldenrod-colored verdict form is the
23 official form you will be asked to return to the Court.

24 After you've reached a unanimous agreement on a
25 verdict, your foreperson should complete the goldenrod-colored

1 verdict form according to your deliberations, sign and date it,
2 and advise the clerk you are ready to return to the courtroom.

3 At this point, I'm going to ask our courtroom deputy.
4 She has the goldenrod, which is the official form to complete,
5 and she'll give that to you later when you go to deliberate,
6 but now she's going to hand out the copy of the verdict form to
7 each of you, simply to take a look at, which is -- I think is
8 helpful for you so that you can understand during the lawyer's
9 closing arguments what it is that you are being tasked with
10 determining.

11 So the verdict form, she'll be handing out. Take a
12 moment, ladies and gentlemen, and just read that silently to
13 yourself. And when you're done, if you could put down all your
14 paperwork, and then we'll move on to the closing arguments in
15 just a bit.

16 (Pause)

17 THE COURT: Everybody had a chance to look through
18 that paperwork? All right. Then I think we are ready for
19 closing arguments. Since the government has the burden of
20 proof, the government has the opportunity to start the closing
21 arguments. Then the defense has an opportunity to make the
22 closing arguments on behalf of the defendant, and then the
23 government has an opportunity for a rebuttal at the end.

24 So go ahead, Ms. Vosacek. Good morning.

25 CLOSING ARGUMENT BY THE GOVERNMENT

1 MS. VOSACEK: Good morning, Your Honor.

2 May it please the Court, counsel, ladies and gentlemen
3 of the jury.

4 (Audio playing in open court.)

5 October 28, 2020, is the day that Ray Lee found his
6 youngest son dead in his bedroom. It's the day that
7 Deborah Lee's heart was broken. It's the day that Josh,
8 Jeffrey, and Jason Lee lost their baby brother. And it's the
9 day that the defendant and the downstream distributors robbed
10 Chase Lee of his father. Why? \$5,000. To make money.

11 The defendant bought 500 fentanyl pills in Southern
12 California for \$5 a pill. He sold those pills to Andre Brown
13 for \$10 a pill. Andre Brown sold those pills to Winston
14 Crockett for \$30 a pill. Winston Crockett sold those pills to
15 Jacob Lee for \$60 a pill. And they killed him.

16 The defendant knew that if he could ship the drugs to
17 Fairbanks, he would make more money. Andre Brown told you that
18 he and the defendant talked about drug prices throughout the
19 country and where they could make the most money. Fairbanks
20 was a target. Make no mistake, they chose this community on
21 purpose, because you can make more money here.

22 They chose to feed off the addiction of addicts like
23 Jacob Lee, to put fentanyl into a form that looks exactly like
24 a Percocet pill, a prescription drug. Jacob Lee was not
25 seeking fentanyl. He was seeking a Percocet. And he was

1 tricked. And he took that pill, and it caused his death.

2 The judge has instructed you on the law, that the
3 government has the burden of proof beyond a reasonable doubt
4 that the defendant distributed fentanyl, that he did it
5 knowingly and intentionally. I submit that we have proven
6 this.

7 She's given you the definition of distributing, which
8 includes transferring possession to another person with or
9 without a financial interest. We also have shown the defendant
10 knew it was fentanyl or some other federally controlled
11 substance.

12 I'm going to walk you through the evidence and how we
13 know that this is true.

14 We've shown you Facebook records from a Facebook
15 account, and the name on that Facebook account is OJ Tulali.
16 We've shown you Facebook records from Andre Brown. And we've
17 shown you that the Facebook account from OJ Tulali communicated
18 with Andre Brown's Facebook account via Facebook Messenger.

19 You can determine if the picture taken from
20 OJ Tulali's Facebook is, in fact, the man who's been in court
21 with you this week. That's for you to decide.

22 We also have a voice recording from the Facebook
23 account OJ Tulali that was left on Andre Brown's Facebook
24 account.

25 (Audio playing in open court.)

1 MS. VOSACEK: All this evidence will go back to you in
2 the jury room. You will be able to review that audio. Pay
3 attention to his manner of speech, the sound of his voice, to
4 the words that he says. Pay attention to whether or not that
5 manner of speech, the words that he uses is consistent with the
6 messages going back and forth between OJ Tulali and
7 Andre Brown. You will find that they are consistent. So with
8 all that evidence we have shown, it is the defendant that is
9 communicating with Andre Brown.

10 You will then have to decide whether or not the
11 defendant distributed fentanyl. So how do we know that
12 OJ Tulali, through that account, intended to knowingly
13 distribute fentanyl? Well, we have messages from Andre Brown's
14 phone. You have pictures of the actual text exchange in
15 evidence. We also have the phone records from Andre Brown's
16 phone.

17 In Andre Brown's phone, you have a contact listed as
18 OJ. That contact sends a message to Andre Brown, and it's got
19 pictures of Percocet pills. They're blue. They have the same
20 imprint as a real Percocet. They look exactly like the
21 pharmaceutical pill Percocet. He sends a picture to
22 Andre Brown. Andre Brown responds with an address, and that
23 address is 310 Tipperary Court, Apartment A, Fairbanks, Alaska.
24 Andre Brown -- I'm sorry. OJ says, "Got it." Andre Brown,
25 thumbs up emoji, heart emoji.

1 Later on, we see that OJ sends a picture of a shipping
2 label that has that same address, 310 Tipperary Court,
3 Apartment A, Fairbanks, Alaska. You also heard testimony from
4 Andre Brown that he received that package here in Fairbanks,
5 Alaska.

6 Now, how do we know that it's fentanyl? Well, you
7 heard testimony from Andre Brown that he's a drug dealer and
8 that he's basically been dealing drugs his entire adult life.
9 And he told you that he picked up that package from the post
10 office with Marley Warner, and that was on October 19th.

11 We showed you WiFi connections from Andre Brown's
12 phone in the area of that post office on October 19th. He told
13 you he took the package to 310 Tipperary Court and then began
14 reaching out to his other distributors to see if he could start
15 offloading these pills. We've provided you Facebook records
16 from Andre Brown, and also his phone records. You can review
17 those, and you can see that he does not discuss buying pills
18 with anybody else except for the contact OJ. But he does
19 discuss selling pills to a bunch of other people, because he's
20 reaching out to his distributors to start offloading these
21 drugs.

22 He was arrested on November 6th of 2020, and he told
23 you that when he was arrested, he had some of these pills left,
24 about 59. They were found in his coat pocket with money and
25 his ID. He told you they were his and that these were the

1 pills that the defendant shipped to him.

2 Well, we know they are fentanyl because we took those
3 pills and we sent them to the lab and they were confirmed to be
4 fentanyl. But don't just take my word for it. You're going to
5 have all of this evidence when you go deliberate. I submit to
6 you, if you follow the money, you will see it is, in fact, the
7 defendant that shipped these pills to Andre Brown.

8 OJ says, "Hit me with about 5K. Let's close out first
9 run and hit for the second wave. Enlighten me further."
10 Strong emoji. He gives a name, Junior Gufatasi Tulali.

11 Now, I've told you how valuable these pills are,
12 right? So you would think that the person who shipped these
13 pills has an interest in getting paid. And you can go and
14 review the messages between Andre Brown and OJ Tulali and see
15 that they discussed payment and how that payment was going to
16 be effectuated. He gave his Paypal account name, Junior. He
17 confirmed receipt of the money from Andre Brown.

18 You heard testimony from Agent Carr that when he
19 arrested the defendant, that he had a phone. He had the phone
20 number that was saved in Andre Brown's phone as the contact OJ.
21 He called that number, and the phone that the defendant had
22 when he was arrested rang.

23 Agent Carr told you that that phone number was
24 associated with a real person. That person is the defendant.
25 That person had an address in Southern California. That phone

1 was pinging in Southern California.

2 Exhibit No. 31 was admitted into evidence, and you
3 will be able to play it when you go back into the jury room.
4 You can decide for yourself what the defendant is saying in
5 this conversation. I apologize, but you're not going to
6 probably be able to hear it very well here today.

7 (Exhibit No. 31 playing in open court.)

8 MS. VOSACEK: Go back and listen to that recording,
9 Exhibit No. 31. The defendant says, "They got to get those
10 dudes, though." He's talking about this trial. He says, "They
11 got to get those dudes, though." He says, "But are they going
12 to come? I don't know. If they don't come, they don't come."

13 Well, they showed up. They came here and they
14 testified, and their testimony was consistent with the other
15 evidence that we have presented. Their testimony was
16 consistent with their phone records, with their Facebook
17 records.

18 Why didn't the defendant want them to come? Because
19 he knew if they testified truthfully, he could be found guilty.

20 On your verdict form, the first question that you're
21 going to have to answer is whether or not the government has
22 met our burden to show that the defendant distributed fentanyl.

23 I submit that we have met that burden and that you
24 will find the defendant guilty. If you do, you will move on to
25 the second question. Did that distribution of fentanyl result

1 in Jacob Lee's death?

2 I submit that we have proven that as well. Two hours
3 and 20 minutes is how long it took for Andre Brown to deliver
4 pills to Winston Crockett, to deliver pills to Jacob Lee. How
5 do we know this? Well, we have Facebook records. We have
6 phone records that show those communications. You heard
7 testimony from Andre Brown and Winston Crockett that was
8 consistent about where they met, what they did, who the pills
9 went to. We've got a very short time window here, two hours
10 and 20 minutes.

11 You can look through those records yourself and see
12 that Andre Brown and Winston Crockett are communicating with
13 each other, that Winston Crockett is not communicating with
14 anyone else to get pills from anyone else, that Jacob Lee is
15 not communicating with anyone else to get pills from anyone
16 else.

17 Two hours and 20 minutes.

18 Why is Winston Crockett's overdose important? It goes
19 to show how potent these pills were, that the pills that were
20 delivered to Andre Brown, in fact, caused people to overdose.
21 Winston Crockett told you that right after he delivered those
22 pills to Jacob Lee, that he took a half a pill, and he told you
23 about the symptoms that he had, constricted vision, nausea and
24 vomiting, that he lost consciousness, that he lost time, that
25 he woke up in his hallway he didn't know how long later, and

1 that he had difficulty breathing. Scott Larson told you, the
2 toxicologist, that those symptoms are consistent with acute
3 fentanyl toxicity.

4 And you don't have to believe Winston Crockett. Look
5 at his records. For about nine hours, he stops all
6 communication. He goes silent. He doesn't respond to the
7 people that are messaging him. What does he do nine hours
8 later? Does he respond to the messages waiting on his phone?
9 He reaches out to Andre Brown, says, "Them 30 are the real
10 thing, right? There's some crazy shit going around." And
11 what's the second thing that he does? He reaches out to
12 Jacob Lee, his friend and customer, to see if he's okay. Why?
13 Because he's knows there's something wrong with these pills.

14 We know a good bit of information about Jacob Lee's
15 last days through his phone records, which you will have while
16 you deliberate.

17 We know that on October 26, 2020, at approximately
18 2:20 p.m., Jacob Lee got the pills from Winston Crockett. At
19 2:26 p.m., just minutes later, Jacob Lee Googles "Pill
20 Identifier." Now, Sergeant Reuter testified for you that he
21 tallied up all of the step information on Jacob Lee's phone,
22 and you'll have that when you deliberate.

23 On October 25th, Jacob Lee took about 11,000 steps.
24 On the 26th, about 3,700. On the 27th, about 59, and no steps
25 on the 28th.

1 We know the last thing that Jacob did with his phone.
2 On October 27th, at 7:34 p.m., he Google searched "acclimated."
3 That's last thing that Jacob did. He -- all of the calls after
4 that go to voicemail. The phone doesn't move until on the 28th
5 at 7:00 p.m., when first responders and law enforcement are
6 already at the residence.

7 So sometime between 2:20 p.m. and 7:34 p.m., which is
8 about 29 hours, Jacob Lee took the pills that he got from
9 Winston Crockett, and he overdosed. You can look through those
10 phone records for those 29 hours. Jacob Lee does not talk to
11 anybody about buying any other pills or any other controlled
12 substance. He took the pill that he got from Winston Crockett,
13 the pill that Winston Crockett got from Andre Brown, the pill
14 that Andre Brown got from the defendant, and died.

15 You heard testimony that the cause of death of
16 Jacob Lee is acute toxic effects of fentanyl. This is a
17 22-year-old healthy man who should still be alive, but for the
18 use of fentanyl.

19 You heard from the toxicologist that Jacob Lee had
20 three times the amount of a potentially lethal dose of fentanyl
21 in his system.

22 Aimee Ludwick. Why is Aimee Ludwick's overdose
23 important? Again, it goes to show that the pills that the
24 defendant distributed are, in fact, deadly and caused yet
25 another overdose. We know that Aimee took a pill from the same

1 batch that was delivered to Andre Brown. Why do we know that?
2 You can look through the records and think back to the
3 testimony.

4 Now, on November 6, 2020, Aimee Ludwick told you that
5 she was a drug addict at the time and that she was trying to
6 find somewhere to get a pill, somewhere to get high, and she
7 reached out to somebody she didn't know, that she had gotten
8 contact information from a buddy, and she called this man and
9 they met and she got the pill on November 6th and she took it
10 about 20 minutes later, and the next thing she knows, she's
11 waking up and there's people around her and she had had an
12 overdose.

13 But how do we know that that pill came from the
14 defendant's batch? Well, if you recall, Andre Brown testified
15 that he sold pills to Clifford Andrews and Aimee Lee --
16 Aimee Ludwick, I'm sorry, when she woke up, she told law
17 enforcement, here's the phone number from the guy I bought the
18 pills from, and here is his physical description.

19 Law enforcement knew that that phone number was
20 associated with Clifford Andrews, so they go talk to
21 Clifford Andrews. Sergeant Reuter told you he called the
22 number that Aimee Ludwick gave him while Clifford Andrews was
23 walking away, and Clifford answers the phone. So again, the
24 pill that Clifford Andrews gave Aimee came from Andre Brown,
25 which came from the defendant, showing just how potent this

1 batch was.

2 (Audio playing in open court.)

3 MS. VOSACEK: You will have that evidence back with
4 you in the jury room, where you can listen to it. It's the
5 sound of Aimee Ludwick overdosing.

6 The second question that you have to answer is whether
7 or not you find that the fentanyl distributed by the defendant
8 resulted in the death of Jacob Lee. I submit that you will
9 find that we have met the burden and proven that those pills
10 came from the defendant.

11 People talk about distribution of controlled
12 substances as being a victimless crime. Is it?

13 THE COURT: Thank you.

14 Do you want to take a short break or are you ready to
15 proceed?

16 MR. CAMIEL: Five minutes.

17 THE COURT: Let's take about five minutes. Please
18 leave your notepads and all the paperwork I give you here in
19 the courtroom, and we'll be back in about five minutes, when
20 the defense is ready to proceed. Please don't discuss the case
21 or do any research.

22 DEPUTY CLERK: All rise. This matter now stands in a
23 five-minute recess.

24 (Recessed from 9:20 a.m. to 9:26 a.m.)

25 (Jury present)

1 DEPUTY CLERK: Please be seated.

2 (Pause)

3 DEPUTY CLERK: All rise. Her Honor, the Court, the
4 United States District Court is again in session.

5 Please be seated.

6 THE COURT: All right. We are back on record. Ready
7 to proceed?

8 MR. CAMIEL: Yes.

9 CLOSING ARGUMENT BY THE DEFENSE

10 MR. CAMIEL: May it please the Court, counsel,
11 Mr. Tulali, and his family, ladies and gentlemen. How many
12 times did you just hear the assistant United States Attorney
13 mention the name Andre Brown? I was going to keep count
14 because I knew she would. I lost track. Now, we're going to
15 talk about that because the government's case relies on him and
16 it's dependent on your believing what that man had to say
17 beyond a reasonable doubt.

18 There has been a lot of talk about Facebook and all
19 the messages, and we'll talk more about it on Facebook. You
20 had Mr. Brown's Facebook messages. You got to see those. You
21 had Winston Crockett's Facebook messages. You got to see
22 those. Jacob Lee's Facebook messages. And in Brown's Facebook
23 messages, there were these messages with OJ, drug-related
24 messages, no doubt about them, right?

25 But you heard the testimony from Special Agent Carr

1 yesterday that he got and scoured through Mr. Tulali's Facebook
2 account. Remember what he showed you yesterday? Family
3 pictures, picture after picture. This all starts at
4 Exhibit 43. Goes through Mr. Tulali with his family at a
5 cemetery plot. All kinds of pictures of him, right? Where are
6 the messages on his Facebook that he's supposed to be having
7 with Mr. Brown? Where are the drug-related messages? The most
8 incriminating thing he could find were family photos on
9 Mr. Tulali's Facebook account.

10 If he would have found anything else remotely
11 incriminating, they would have brought it to you in this
12 courtroom, and they didn't because it wasn't there. Now, in a
13 few moments, this case is going to be your responsibility. The
14 lawyers are going to be done talking, and I know you'll be
15 happy about that. And Judge Gleason will give you the final
16 instructions, and then 12 of you are going to stand up and walk
17 back into the jury room, and it is then your case and your
18 responsibility.

19 And as jurors, you meet as a group and you will talk
20 to each other and you will go through the evidence together,
21 but ultimately, you make an individual decision. Each one of
22 you will decide for yourself after talking to all of your
23 fellow jurors and listening to what they have to say.

24 And no juror's opinion has any greater weight than
25 anyone else's. You're all equals back in that jury room. And

1 you're going to have an instruction that says you have to
2 decide the case for yourself after you consider what your
3 fellow jurors have to say, and you don't surrender to the
4 loudest voice and you don't surrender to the lateness of the
5 hour. You take your time, you think about what you're hearing
6 from your fellow jurors, and then you stick with your honest
7 opinion about what you believe.

8 Now, your task as jurors isn't to come back and tell
9 us what happened, to fill in the gaps in the evidence, to
10 explain a narrative of who did what and when, and how
11 everything happened. That's not what you're asked to do. When
12 you look at the jury instructions and you look at the verdict
13 form, what you're going to see is that what you're asked to do
14 is answer one question: Has the government proven to you
15 beyond a reasonable doubt, beyond any and all reasonable doubt?
16 And I say "any and all" because if there is even one reasonable
17 doubt, the instructions tell you that you're required to return
18 a verdict of not guilty.

19 So your task is to determine whether the government
20 has proven beyond a reasonable doubt the charge that they
21 brought against my client, Junior Tulali.

22 And there are some tools in the jury instructions,
23 legal principles that help you accomplish that task.

24 You've got instruction number two that explains to
25 you -- so there are really three legal principles to help you.

1 They're kind of your toolbox to use.

2 And the first of those is the presumption of
3 innocence. My client, just like anyone else charged with a
4 crime in this country, is presumed to be innocent. What that
5 means is that you start off assuming that what you're going to
6 do is circle the not guilty on the verdict form. That's where
7 you start. You don't start even, with both sides even, you
8 start with the presumption that this man is not guilty. You
9 know, in your everyday life, when you're online and you're
10 reading about a crime story, or pick up, if you still read a
11 newspaper, a crime story, you might form an opinion about
12 whether somebody is guilty or not. You're not starting with a
13 presumption of innocence.

14 But you're in a different place now. You're in a
15 different room. You're in a very special room. And the rules
16 here are different, and so you start with that presumption of
17 innocence.

18 The second thing that you see this instruction tells
19 you is the government has the burden of proof. Somebody
20 charged with a crime in this country doesn't have to come to
21 court and prove that they are innocent. The government has to
22 do the proving. We don't have to call any witnesses. We don't
23 have to present any evidence. It's on the government. And the
24 burden of proof that's on them is proof beyond a reasonable
25 doubt.

1 And you will have an instruction that explains to you
2 what reasonable doubt is. Beyond a reasonable doubt is the
3 highest legal standard in any court in this country. You know,
4 you heard Special Agent Carr talk about you need probable cause
5 to get a search warrant. He said 51 percent. Well, beyond a
6 reasonable doubt is way, way above that. You have to be so
7 firmly convinced that you can't think of a reason to doubt the
8 truth of the charges that the government brought.

9 You have to be firmly convinced. And a reasonable
10 doubt can arise from the evidence or the lack of evidence. And
11 I want to talk to you about a few different words that
12 sometimes come up or you hear when you hear arguments. One of
13 them is the word "maybe," maybe he did this, maybe he did that.
14 Or "perhaps" or "possibly." Those are all words that indicate
15 there is doubt. Those are words of uncertainty. So if you're
16 thinking, well, maybe Jacob Lee saved the pills that he got
17 from Winston Crockett on the 26th and didn't take them until
18 the morning of the 28th, or maybe something else happened,
19 maybe is not beyond a reasonable doubt.

20 You're also not supposed to speculate and fill in the
21 blanks. You've got what you've got. The evidence the
22 government presented, that's it. You don't speculate about
23 what they might have been able to find had they done a more
24 complete or thorough investigation.

25 There are two instructions that I want to talk to you

1 about that are special. There are two witnesses in this case
2 that are singled out for special cautionary instructions,
3 instruction number 11 and instruction number 10, Andre Brown
4 and Winston Crockett. They are singled out because they made a
5 deal with the government. They got something in return for
6 their testimony.

7 Both of these men were facing mandatory minimum prison
8 sentences. Andre Brown was facing a potential of a mandatory
9 life sentence. Think about that, the pressure that would be on
10 you. Winston Crockett, mandatory 20 years.

11 And they made a deal, and the benefit they got in
12 return for their deal was they got a whole lot less time. But
13 what they had to do was come in and testify against Mr. Tulali.
14 That's the deal they made. And this instruction is almost like
15 a poison symbol you would see on a bottle. It's like the skull
16 and crossbones in red, warning you to be careful about the
17 testimony of these witnesses.

18 You're already going to be careful. We know that.
19 You're already going to hold the government to its burden of
20 proof and apply beyond a reasonable doubt as the standard. But
21 this instruction tells you you've got to treat these witnesses
22 even more carefully, and it tells you you have to consider
23 their testimony with greater caution than other witnesses.
24 It's because of who they are and why they're testifying.

25 But there's a second instruction that also singles out

1 these two men. They're both convicted felons. And under the
2 law, that means you get to consider whether that bears on their
3 credibility. You've got two different warning instructions
4 telling you, be careful with these guys. But you heard the
5 government attorney, how many times she mentioned Andre Brown,
6 how heavily they rely on him to make their case.

7 I want to talk a little bit about the government
8 investigation.

9 You probably -- I'm sure you saw that when I
10 cross-examined Officer Brubeck and Detective Reuter and Special
11 Agent Carr, I questioned them a bit about all the things that
12 they didn't do as part of the investigation, the places they
13 didn't look. Right? And they had a whole host of excuses
14 about why they didn't go get a search warrant for this place or
15 that place, why they didn't try to examine a phone, why they
16 didn't get certain records.

17 But the real reason, the real reason they didn't do
18 any of those things was it was much easier and quicker to rely
19 on the likes of Andre Brown and Winston Crockett rather than
20 going out and doing the legwork and the thorough investigation
21 that you would hope would be done when you're investigating the
22 death of a young man by overdose. Instead, they decided, we'll
23 just rely on these guys.

24 So think about all the things that didn't get done.
25 Andre Brown gets arrested on November 6th driving a stolen

1 Hummer, and in that Hummer they find 59 little blue pills in
2 his jacket, with a bunch of money. He gets arrested right then
3 and there. He tells them, I'm staying at the 7 Gables motel
4 here in town.

5 Wouldn't you think, kind of investigation 101, you go
6 get -- you go to a judge and you get a search warrant? You
7 don't think the judge would give you a search warrant for that
8 place after you've arrested a guy in a stolen vehicle with
9 contraband counterfeit Percocet pills who tells you where he's
10 staying? Wouldn't you want to go there and see, does he have
11 any other phones, does he have any other pills, does he have
12 other drugs, is there money there? They don't do any of that.
13 Okay.

14 So what else don't they do? They've got a picture of
15 a package label, right? They never recover a package. They
16 never actually find the label. But they've got a picture on
17 Andre Brown's phone of a label with a sender's address in
18 Gardena, California.

19 We were talking about the house in Gardena,
20 California, the sending address for what was supposed to be a
21 package, right? And there's a name and there's an address, and
22 you hear that the police never bothered to go out there. Why
23 not? Well, sometimes it's a vacant lot and sometimes it's
24 just a -- there's nobody living there. And sometimes it's even
25 a fake address. Well, they conceded it's a real address, it's

1 not a vacant lot, and they never go out there. They didn't get
2 a search warrant for the place, but they didn't even need to do
3 that. Why don't they go out there and knock on the door?

4 Don't need a search warrant. See who lives there. Ask them if
5 they know the name of the person on the package label.

6 Or if you don't want to get out of your car, you could
7 at least drive up and watch the place for a few minutes, take
8 down the license plates numbers, do something to investigate
9 that location. Isn't that a great lead? Now, maybe it leads
10 nowhere, but maybe, just maybe, it helps you identify if there
11 was a package, where it came from, and who sent it. They don't
12 do that.

13 Mr. Tulali gets arrested and he's got a cell phone
14 with him, and it's the same number that they've been tracking,
15 except at the time in November of 2020, that cell phone
16 belonged to somebody named Lavel Wallace. That's who the
17 subscriber was. But you heard Agent Carr. They get that cell
18 phone. Why don't you look in it, like you looked in
19 Mr. Brown's phone or Crockett's phone or Jacob Lee's phone? He
20 says, well, it was locked. Well, you heard from him, the
21 government can unlock those things. All they have to do is
22 try, and they didn't even try.

23 How about getting Paypal records? Supposedly there
24 were payments sent through Paypal records, right? Or how about
25 the phone records? So you've got this phone with the phone

1 number, and a subscriber is Lavel Wallace, right? Who is
2 paying the bill? This isn't a burner phone. It's not a
3 prepaid phone. Somebody is paying the bill for that phone.
4 Why don't you get the records to see? They don't do that.

5 So let's talk about 310 Tipperary Court, the house
6 that Mr. Brown was driving away from with somebody named
7 Mr. Kearney, who you didn't get to hear from. So they go to
8 that house. They do get a search warrant for that house and
9 they find some cocaine in the garage, in a shoe, and they find
10 some pills in a microwave -- or in a cabinet above the
11 microwave in the house, a house that is rented by a woman named
12 Kweka Warner, who is apparently called Mama. And you saw the
13 note from Mr. Kearney about him helping Mama sell her pills.

14 Well, where is Kweka Warner? What happened to her?
15 What does she have to say about those pills? Where did those
16 pills come from? Now, the government is going to say, well,
17 those are part of Mr. Brown's stash that he says were missing.
18 There is no corroboration of that. There's nothing to prove
19 that.

20 Or how about -- how about Marley Warner? That was the
21 14-year-old girl who Mr. Brown had her name put on that
22 sending -- or recipient name for a package. 14-year-old girl,
23 Mr. Brown has her name put on there. She would be 18 years old
24 now, right? 17, 18. Don't you think she would remember if
25 Mr. Brown pulled her out of school or picked her up from

1 school, took her to the post office, had her use her ID to pick
2 up a package? She probably wouldn't know what was in the
3 package, but she would be able to corroborate whether that
4 happened or not. We don't hear from her.

5 You know, the government's theory of the case is that,
6 well, Mr. Brown has got these phone calls and messages with OJ,
7 and my client is sometimes known as OJ, and he ends up with a
8 phone that was used back in 2020, and they say, okay, that's
9 it, that's all we need, that and Mr. Brown.

10 But, I mean, think about it. Mr. Brown is arrested on
11 November 6th, and he's had all these messages, Facebook and on
12 his phone, with whoever is at the other end of that phone, 310
13 phone number, so -- and that phone at the time was subscribed
14 to by this Lavel Wallace. And so wouldn't you think you'd want
15 to get -- if you were the sender of the pills, you would get
16 rid of that phone, you'd dump it, and maybe somebody else ends
17 up with it? But what you wouldn't do is put it in your own
18 name after that, would you? Is that really what would happen?

19 So let's talk now about some of the witnesses who did
20 testify. And I want to start and talk about some of the
21 experts, the scientific people, and I'll start with Dr. Rolf,
22 the medical examiner here in the State of Alaska. She's in
23 Anchorage. She's the one who did the autopsy on Jacob Lee.
24 She's the one who collected the blood and other samples and had
25 them sent to a lab, a toxicology lab. What did she tell us

1 that she found? Well, first of all, she got a history, and the
2 history was polysubstance abuse. And what she was told was
3 heroin and methamphetamine and alcohol and marijuana. And she
4 had information that she could see from examining the body that
5 there were puncture marks on the arm that may or may not be
6 injection sites for using drugs.

7 And she indicated that she classified the death -- you
8 will see this in the report -- as an accident. Government
9 didn't ask her about that, but if you look at the report,
10 that's the way she classified it. But she said that Jacob Lee
11 died from a lethal dose of fentanyl in his blood. But she also
12 told you she couldn't tell you how it got there or what he
13 took. She relies on the toxicology report in terms of making
14 the determination that it was a lethal dose of fentanyl.

15 But one of the other things she told you was her
16 estimate of the time of death. She's done thousands of
17 autopsies, and she said her estimate was that when he was found
18 at 5:22 p.m. on October 28th, he had been dead for about eight
19 hours, she said give or take, eight hours. Now, the government
20 didn't like that answer because it doesn't fit their theory of
21 the case. But if you back that up, if you back that up,
22 5:22 p.m. So if you go back to noon -- or 12:22, that's five
23 hours, another three would be 9:22, that's pretty important
24 information as you think about this case.

25 The other people we heard from were the chemists, the

1 people who examined the two batches of pills that were found --
2 there was the batch -- the baggie that was found in Mr. Brown's
3 jacket and there was the little baggie that was found in that
4 house above the microwave, two separate batches of pills. Now,
5 one of the things you heard from the chemist was they can't
6 tell you if they're from the same source. They can't say they
7 all came together as a group or whether there were different
8 sources and Mama had her own source for pills and Mr. Brown had
9 his source. But they examined the pills, and they told you
10 something that's very, very important in terms of your
11 consideration of this case. They told you that they found
12 fentanyl, but they also found acetaminophen in the pills. And
13 that becomes very important when we get to the toxicologist,
14 right?

15 So we get the toxicology guy. He came in yesterday,
16 Mr. Larson, and he told you he wasn't the one who did the
17 original work on the case, but he did the reexamination of the
18 data they collected. He told you there were a couple problems
19 that the lab had. One just had to do with some interfering
20 substance with the marijuana. They put that in their report.
21 But then there was this other problem with their testing of the
22 femoral blood that they didn't put in their report and let
23 Dr. Rolf know. But totally separate from that, you have his
24 findings, and he talked about finding fentanyl and norfentanyl
25 and THC. But there's nothing in there about acetaminophen.

1 And the reason there's nothing in there about acetaminophen is
2 because they didn't test for it. They could have. He said
3 they do that. But they didn't.

4 Why is that critically important? Well, the pill --
5 the government says Jacob Lee ended up with pills that
6 Mr. Brown had. And the government's theory is Mr. Brown got
7 those pills from Mr. Tulali. And the pills that Mr. Brown had
8 had acetaminophen and fentanyl, but the toxicology report just
9 says fentanyl.

10 Well, what if the toxicology report -- what if the
11 toxicology lab had done a thorough exam and tested for
12 acetaminophen and it didn't come back, no acetaminophen? Then
13 you would be able to say very easily, well, what Jacob Lee took
14 didn't come from what Mr. Brown was selling. But instead, they
15 don't do the test, a critical test. If that's not glaring,
16 flashing reasonable doubt, what is? That's a critical step in
17 the investigation, and they didn't do it.

18 That's the note that Mr. Kearney sent Mr. Brown about
19 Mama's pills, right? The Mr. Kearney that we didn't hear from.
20 Where was Mama getting her pills?

21 There's some other witnesses that testified that I
22 wanted to talk about a little bit. One of them was Jacob Lee's
23 brother Jeff. And, you know, it's really hard when family
24 members have to testify in a situation like this. And Jeff has
25 had his own struggles with drug addiction, drug use. You heard

1 about his heroin use and his use of pills. He had been buying
2 pills from Mr. Crockett for a long, long time. There were some
3 significant things that he said that I suggest are very
4 important.

5 One of them was, he didn't know his brother borrowed
6 his Subaru on the 26th to go meet with Mr. Crockett, which
7 shows that Jacob Lee was probably sneaking around and not
8 letting people know when he was going out and where he was
9 going.

10 The other thing that's important to remember is
11 Jeff Lee's bedroom was right downstairs, next to his brother's.
12 And you remember that when Officer Brubeck testified at the
13 beginning of the trial, he was one of the first policemen at
14 the scene, investigating the death, and he pretty quickly
15 suspected it might be a drug overdose and he looked around in
16 Jacob Lee's room and he did a cursory look in the bathroom, but
17 he didn't look anywhere else. He didn't look in Jeff's room,
18 didn't look in any other rooms, didn't look in the vehicles.
19 So we don't know whether there was anything to be found or not.

20 But the other thing that Jeff mentioned was how
21 frequently and what he had been getting from Mr. Crockett, and
22 it contradicted what Mr. Crockett told you in terms of his
23 selling 30s and how much he was selling and how frequently.
24 But the other critical thing that Jeff Lee mentioned was, he
25 said a few weeks before his brother died, Jacob came to him and

1 asked him for pills. Now, Jeff Lee testified that he quit
2 pills quite some time before that. He said years before that.
3 If that's not true, I'm not sure why Jacob Lee would be coming
4 to him asking him for pills. But he also said Jacob said he
5 couldn't find any anywhere, which meant he wasn't just looking
6 to Mr. Crockett. He had other people he reached out to try to
7 find pills, which begs the question, after he got the pills on
8 the 26th from Mr. Crockett, did he reach out and get something
9 from somebody else?

10 And that gets us to Mr. Brown, the guy who is arrested
11 driving a stolen Hummer, who the government is relying on to
12 make their case. So Andre Brown is an admitted drug dealer.
13 He says he came out from Florida and brought cocaine with him,
14 which I thought was interesting for him to say because then
15 later in his testimony he said, well, he wouldn't fly with
16 drugs on a plane because of the way things are now. So he
17 contradicted himself right there. He admitted he would go to
18 Arizona and get drugs and bring them back. He admitted that he
19 went down when he rented that Hummer under somebody else's name
20 with no intent on returning it. So it became a stolen vehicle.
21 He came back with a load of heroin and then he bought
22 methamphetamine here. So he's a busy guy. He's selling all
23 kinds of drugs.

24 And he makes the claim, totally uncorroborated, that
25 the first time he gets involved in pills was on this occasion.

1 Can you believe that one? Look how quickly he got rid of the
2 pills. He knew just what to charge. He knew just who to go
3 to. But think of all the things that Mr. Brown said that
4 weren't true. I mean, when he was first arrested, he lied
5 about the vehicle. He just said he borrowed it from somebody
6 in Fairbanks. Then he denies knowing about the jacket. Then
7 he denies knowing about the pills. Then when they finally
8 confront him with the fact his ID is in the jacket with the
9 pills, he wants to make a deal with the police.

10 They've now got him at the police station. He said, I
11 wanted to go home, and he told them he would tell them the
12 truth. Just like he took the oath on the witness stand to say
13 he was going to tell you the truth, he said he was going to
14 tell the police the truth. So they said, okay, where did the
15 pills come from? And he says from Melvin Williams and he tells
16 them who Melvin is, he used to sell cocaine with him, and what
17 he drove and where he met him. And now he tells you, well,
18 that wasn't true. I was just getting back at Melvin. It was
19 just retaliation because I thought maybe he turned me in.

20 Let's look at the list of people that Mr. Brown throws
21 under the bus to protect himself. There is whoever the guy is
22 whose ID and name he used to rent the vehicle so when that
23 vehicle is reported stolen it doesn't come back on Mr. Brown,
24 it's on that guy. This 14-year-old girl whose name is on the
25 label of the package. Melvin Williams, who he tells the

1 police, he's the guy I got the pills from. And now add to the
2 list Junior Tulali.

3 Mr. Brown will throw anybody under the bus to protect
4 himself. You know, the government might try to tell you that
5 what he says is all corroborated, but you got to ask yourself,
6 is that true? Is that really true? Remember there are those
7 messages that Mr. Brown has about being in Arizona, and he
8 says, oh, I wasn't really in Arizona, I was just lying to
9 somebody about where I was, or the messages about dipping down,
10 I had to dip. None of that is corroborated. What he's saying
11 isn't corroborated.

12 You heard from Winston Crockett. He's the other guy
13 that made the deal. He tells -- he sells pills to Jacob Lee on
14 the 24th, two days before the 26th, two pills. Where did he
15 get those from? You know, he said he had half a dozen sources,
16 is what he said, right? How do you know the pills he sold on
17 the 26th to Jacob Lee didn't come from the source that he had
18 on the 24th? You don't. You have to take Mr. Crockett's word
19 for it, the guy who when he's first confronted by the police
20 lies to them and then after they arrest him lies to them again,
21 and then after he agrees to cooperate and there's a cooperation
22 agreement, lies to them again, the guy who says he overdosed.
23 There is no corroboration of that. Yeah, he wasn't on the
24 phone for a while, but you will see messages where he had to
25 use -- he had to use the library WiFi or hadn't paid his phone

1 bill. But he claims, yeah, after I passed out from using the
2 pill, I flushed them all down the toilet. Turns out that
3 wasn't true. He was still selling them.

4 If he thought those pills were so bad, he's still out
5 there selling them. But that's the second guy the government
6 is relying on. That's the guy who ultimately gave something to
7 Jacob Lee on the 24th and on the 26th. We don't know what, if
8 anything, Jacob got after that.

9 Erase the messages. That's what Winston Crockett is
10 telling Jacob Lee, erase the messages. And for all we know, a
11 lot were erased. When we had Mr. Crockett on the stand, we
12 showed a bunch of the messages that were recovered way back in
13 January of 2020 when he was selling the pills. He certainly
14 seemed to have a ready supply, a ready source of pills long
15 before October 26th.

16 This is the Andre Brown down in Arizona. Remember he
17 said that wasn't true, he wasn't really in Arizona, even though
18 he texted somebody he was about to fly back to Alaska? What's
19 he doing down there? What he told you, he went down there to
20 get drugs. He admitted that. He denied pills. But he's
21 coming back with something, and he just happens to have pills
22 when he gets back.

23 Then you had the, "I had to dip and get some other
24 shit. You know anybody who would be wanting those Perc 30s?"
25 The term "dip," meaning he had to go down to Anchorage. He

1 came back with pills, again. He had a source of supply totally
2 separate from whoever he's messaging with.

3 And then there's, "Just touched the soil with some
4 30s." This is the message to Mr. Crockett, "Know you be in
5 that lane." "Just touched the soil." That's not, you know,
6 just got my shipment or just got my package. That's just came
7 back with something. With what? With some 30s. "Know you be
8 in that lane" means he dealt with Mr. Crockett before regarding
9 pills. That's the lane that Mr. Crockett was in.

10 You know, the government's case relies on people who
11 lied to the police repeatedly, who throw other people under the
12 bus. Those are the people now they want you to rely on as you
13 try to figure out whether the government proved its case beyond
14 a reasonable doubt.

15 But let me ask you this. Okay. Let's say you got
16 beyond the credibility problems of Mr. Brown and Mr. Crockett
17 and you decided, okay, despite all the problems with those
18 witnesses, we're going to believe the pills came from
19 Mr. Tulali. The government's case still falls short in proving
20 whatever it was Jacob Lee took came from what Mr. Brown got
21 because what you heard from Aimee Ludwick, she had ten
22 different sources out there. Mr. Crockett said he had six. So
23 there are a lot of people here selling pills.

24 And most important, you get back to the medical
25 examiner can't tell you what he took and the toxicology report

1 totally left out the acetaminophen.

2 And so the government's attempt to prove where the
3 fentanyl came from that was in Jacob Lee's blood just fails.
4 They just can't prove it.

5 We talked about Mr. Tulali's messages, that there were
6 no drug messages whatsoever found in his Facebook. Whatever
7 his Facebook had didn't match up with Mr. Brown's, that's for
8 sure, because all they found were the family photos.

9 Now, there's no dispute that fentanyl is a real
10 serious problem and a lot of people have been hurt by it, and
11 there are a lot of people who are angry over it and very
12 frustrated and want to do something about it. But we don't
13 relax the rules of the justice system because of the nature of
14 the charge. We don't say, well, we're going to dispense with
15 the fact that the government has the burden of proof because a
16 young man died of a fentanyl overdose, or we're going to shift
17 the burden of proof or relax the beyond a reasonable doubt
18 standard.

19 In fact, it's this kind of case where those legal
20 standards are most important, to make sure that the wrong
21 person isn't held accountable in such a serious case. And so
22 now more than ever, making sure the burden stays on the
23 government, the presumption of innocence isn't relaxed or
24 dispensed with, it stays with my client, and the government is
25 held to that beyond a reasonable doubt standard.

1 You know, at the end of this trial, whatever the
2 verdict is, you're going to walk out of the courthouse feeling
3 maybe a little bit of despair or sadness about such a tragic
4 situation, and that's understandable. And whatever your
5 verdict is, it's not going to bring Jacob Lee back to his
6 family. But you should also walk out of the courthouse knowing
7 that you did your constitutional duty, that you followed the
8 instructions, that you didn't succumb to any temptation to give
9 the government a break.

10 So I know you're going to examine the evidence and
11 you're going to consider the testimony of Mr. Brown and how
12 heavily the government has relied on him, and those warning
13 instructions, and you're going to consider whether he has any
14 credibility at all, let alone whether you could believe him
15 beyond a reasonable doubt. And the same for Mr. Crockett.

16 And I know you're going to consider the way the
17 government and law enforcement went about the investigation and
18 the fact that they didn't do some of the most basic things you
19 would have hoped as citizens they would do in investigating a
20 serious crime. And I know you're going to consider the fact
21 that the toxicology lab didn't test for acetaminophen, which
22 would have been real helpful to know when you take on this
23 case. And I suggest that after you have considered all of
24 those things, you're going to find that this case is so riddled
25 with reasonable doubt that you're going to come back with a

1 verdict of not guilty.

2 Thank you.

3 THE COURT: Thank you, Mr. Camiel.

4 Is the government ready to proceed, or would you
5 request a short break?

6 MS. WEBER: We're ready to proceed, Your Honor.

7 THE COURT: All right. Very good.

8 MS. WEBER: Ladies and gentlemen, one thing that is
9 not in contest, not in dispute, is that the burden of proof
10 rests entirely on the government. The defense is presumed
11 innocent. And I submit to you that over the course of this
12 trial, the government has met that burden.

13 The judge is going to instruct you, and she has
14 instructed you, on the definition of reasonable doubt. There
15 is no sign outside of the courtroom that says leave your common
16 sense at the door. Use your life experience. Use your common
17 sense when you evaluate the evidence in this case.

18 Proof beyond a reasonable doubt is proof that leaves
19 you firmly convinced that the defendant is guilty. It's not
20 proof of guilt beyond all possible doubt.

21 Reasonable doubt is doubt based upon reason and common
22 sense. It is not based purely on speculation. And there's
23 little to speculate. The timeline here is so tight, we know
24 what happened to Jacob Lee.

25 10-15-20, the defendant, Junior "OJ" Gufatasi Tulali

1 shipped a package with 500 counterfeit fentanyl pills --
2 counterfeit Percocet pills containing fentanyl to Andre Brown.
3 We know this because we have the shipping label. The defendant
4 made it very easy. He highlighted the date that it was sent,
5 10-15-20, and he highlighted the date that it was expected to
6 be delivered, 10-17-2020. Andre Brown testified that
7 10-17-2020 was a Saturday. He missed the package. The post
8 office was closed and he went back on the 19th, which was a
9 Monday, and he picked it up.

10 On 10-19-2020, Andre Brown got the package with 500
11 pills containing fentanyl. He told you that he had sold most
12 of them by the time he even reached out to Winston Crockett.
13 He sold them to Melvin Williams. He sold them to a person
14 referred to as Cortez. And on October 6th -- on November 6th,
15 when he was arrested, he only had 59 of these pills left.

16 We also know that on October 26, 2020, Andre Brown
17 sold six of those pills to Winston Crockett, who minutes later
18 met with Jacob Lee, sold Jacob Lee two of those pills, and
19 Jacob Lee took them that day and the next day and died of a
20 fentanyl overdose.

21 How do we know this? Because Officer Brubeck
22 testified that he searched Jacob Lee's room. He did not find
23 more drugs. He did not find one pill left over. He did not
24 find foil or heroin or layers or any other paraphernalia you
25 would expect to see had Jacob been using anything else.

1 Winston Crockett may have sold Jacob two pills on October 24th.
2 How do we know that those aren't the pills that killed him?
3 Because he was alive on the 26th. How do we know the pills
4 from the defendant killed him? Because they contained
5 fentanyl, and that's what was in Jacob Lee's blood and that was
6 the cause of his death.

7 Also, we know because Andre Brown also sold pills to
8 Clifford Andrews on November 6, 2020. Clifford Andrews sold
9 the pills to Aimee Ludwick, and she took the pill 20 minutes
10 later, overdosed. Winston Crockett, right after he got the
11 pill from Andre Brown, took half of one and overdosed. I
12 submit that when you go back to deliberate and you go through
13 all of the evidence that's been presented to you, you will find
14 that the government has met its burden of proof and there is
15 proof beyond a reasonable doubt that the defendant knowingly
16 distributed a substance containing a detectable amount of
17 fentanyl to others, resulting in the death of Jacob Lee.

18 THE COURT: All right. Thank you, Ms. Weber.

19 Ladies and gentlemen, now I'm going to ask our
20 courtroom deputy to hand out just a few more additional
21 instructions I have, the final closing jury instructions.

22 After she does that, we'll read through them.

23 All right. So this picks up where we left off, which
24 is instruction 20.

25 When you begin your deliberations, elect one member of

1 the jury as your foreperson who will preside over the
2 deliberations and speak for you here in court. You will then
3 discuss the case with your fellow jurors to reach agreement, if
4 you can do so. Your verdict, whether or not guilty, must be
5 unanimous.

6 Each of you must decide the case for yourself, but you
7 should do so only after you have considered all the evidence,
8 discussed it with your fellow jurors, and listened to views of
9 fellow jurors. Do not be afraid to change your opinion if the
10 discussion persuades you you should, but do not come to a
11 decision simply because other jurors think it's right.

12 It is important that you attempt to reach a unanimous
13 verdict, but, of course, only if each of you can do so after
14 having made your own conscientious decision. Do not change an
15 honest belief about the weight and effect of the evidence
16 simply to reach a verdict.

17 Perform these duties fairly and impartially. You
18 should also not be influenced by a person's race, color,
19 religious beliefs, national ancestry, sexual orientation,
20 gender identity, gender, or economic circumstances. Also, do
21 not allow yourself to be influenced by personal likes or
22 dislikes, sympathy, prejudice, fear, public opinion, or biases,
23 including unconscious biases. Unconscious biases are
24 stereotypes, attitudes, or preferences that people may
25 consciously reject, but may be expressed without conscious

1 awareness, control, or intention. It is your duty as jurors to
2 consult with one another to deliberate with an honest view
3 towards reaching agreement, if you can do so.

4 During your deliberations, you should not hesitate to
5 reexamine your own views and change your opinion if you become
6 persuaded that it is wrong.

7 Instruction 21: Because you must base your verdict on
8 the evidence received in the case and on these instructions, I
9 remind you that you must not be exposed to any other
10 information about the case or to the issues it involves.
11 Except for discussing the case with your fellow jurors during
12 your deliberations, do not communicate with anyone in any way
13 and do not let anyone else communicate with you in any way
14 about the merits of this case or anything to do with it. This
15 restriction includes discussing the case in person, in writing,
16 by phone, tablet, computer, or any other means, via email, text
17 messaging, or any internet chat room, blog, website, or other
18 forms of social media. This restriction applies to
19 communicating with your family members, your employer, the
20 media or press, and the people involved in the trial.

21 If you're asked or approached in any way about your
22 jury service or anything about the case, you must respond you
23 have been ordered not to discuss the matter and report that
24 contact to the Court.

25 Do not read, watch, or listen to any news or media

1 commentary about the case or anything to do with it. Do not do
2 any research, such as consulting dictionaries, searching the
3 internet, or use other reference materials, and do not make any
4 investigation or in any other way try to learn about the case
5 on your own. The law requires these restrictions to ensure the
6 parties have a fair trial based on the same evidence that each
7 party has had an opportunity to address. A juror who violates
8 these restrictions jeopardizes the fairness of these
9 proceedings and a mistrial could result that would require the
10 entire trial process to start over.

11 So if any juror is exposed to any outside information,
12 please notify the Court immediately.

13 Instruction 22: Some of you have taken notes during
14 the trial. Whether or not you took notes, you should rely on
15 your own memory of what was said. Notes are only to assist
16 your memory. You should not be overly influenced by your notes
17 or those of fellow jurors.

18 Instruction 23: The punishment provided by law for
19 this crime is for the Court to decide. You must not consider
20 punishment in deciding whether or not the government has proved
21 its case against the defendant beyond a reasonable doubt.

22 Finally, instruction 24: If it becomes necessary
23 during deliberations to communicate with me, you may send a
24 note through the clerk, signed by any one or more of you. No
25 member of the jury should ever attempt to communicate with me,

1 except by signed writing. I will respond to the jury
2 concerning the case only in writing or here in open court. If
3 you send out a question, I'll consult with the lawyers before
4 answering it, which may take some time. You may continue your
5 deliberations while waiting for the answer to any question.

6 Remember that you are not to tell anyone, including
7 me, how the jury stands numerically or otherwise on any
8 question submitted to you, including the question of the guilt
9 of the defendant, until after you have reached a unanimous
10 verdict or have been discharged.

11 That concludes my instructions, ladies and gentlemen.

12 We're now at the stage of the case where we are going
13 to select the two alternates. Before I ask the courtroom
14 deputy to do that, is there anyone that feels, for whatever
15 reason, you cannot deliberate in this case?

16 All right. Not seeing any hands raised, I'm going to
17 ask our courtroom deputy to pick from our box. She's putting
18 in the numbers. And this is how we used to do it back in the
19 day for the entire process, but now we computerized most of it.

20 DEPUTY CLERK: No. 11.

21 THE COURT: Juror 11. All right. One more, please.

22 DEPUTY CLERK: No. 10.

23 THE COURT: So Jurors 10 and 11. All right. I want
24 to thank you on behalf of the District of Alaska for your
25 service here. I'm going to do what's permitted in one of our

1 rules, Criminal Rules, 24(c)(3), and that is retain you even
2 though the rest of the jury is going to deliberate, which means
3 I'm going to excuse you at this time, but if for whatever
4 reason it turns out we need to replace a juror that's
5 deliberating, we'll call you in in the order that the numbers
6 were drawn, 11 then 10, and then have the jury begin
7 deliberations again, in the unlikely event that one or more
8 jurors was unable to continue to deliberate at some point.

9 And therefore, I'm going to have you still subject to
10 those same provisions not to discuss the case or do any
11 research. Our court clerk will be sure to call you as soon as
12 the jury reaches a verdict or is discharged, and then you
13 would, of course, be free to communicate about the case or not
14 as you may choose. Once again, I thank you both for your
15 service.

16 And can you then escort them out? And we'll come back
17 here in a bit. You can be excused at this time. Leave your
18 notepads, yes, and the instructions there. The courtroom
19 deputy will preserve those until the end of the case, and then
20 they will be destroyed.

21 And then when they're on their way, we will have the
22 rest of you go. And you can take all your papers with you, and
23 your notepads.

24 Are they ready to go? Very good.

25 While she's doing that, I will tell you, we will get

1 you all the evidence. There will be a slight delay, but it
2 will all come to you as soon as we can get it all together in
3 that regard. So very good. Go right ahead.

4 (Jury absent)

5 THE COURT: Please be seated, everyone. A couple of
6 housekeeping things here.

7 Please confirm that you've got all your exhibits,
8 admitted exhibits, with the courtroom deputy, if you haven't
9 already done so. We do have a laptop, I know, here that is
10 available for the jury. There's nothing on it except for the
11 ability to listen to CDs or DVDs that are in evidence.

12 And leave your phone numbers, of course, where we can
13 reach you with the courtroom deputy.

14 Does the defense seek to be present if there are any
15 readbacks, Mr. Camiel?

16 MR. CAMIEL: Yes.

17 THE COURT: Does the government seek to as well?

18 MS. WEBER: Yes, Your Honor.

19 THE COURT: We'll be sure to notify you, then.

20 And with regard to jury questions, if there is a
21 purely administrative question, such as, "can we have a magic
22 marker, I would intend to do those without bringing in the
23 parties and answer it myself, and then have the clerk notify
24 you of that having occurred. Obviously, if there's any
25 substantive instruction of any nature, I would first consult

1 with the parties.

2 Is that approach acceptable to the government?

3 MS. WEBER: It is, Your Honor.

4 THE COURT: Mr. Camiel?

5 MR. CAMIEL: Yes.

6 THE COURT: All right. Very good. I don't have any
7 other issues at this time. Anything from the government?

8 MS. WEBER: No.

9 THE COURT: Anything from the defense?

10 MR. CAMIEL: No.

11 THE COURT: Very good. Then we'll go off record at
12 this time.

13 DEPUTY CLERK: All rise. This matter now stands in
14 recess.

15 (Recessed from 10:28 a.m. to 1:28 p.m.)

16 (Jury absent)

17 DEPUTY CLERK: All rise. Her Honor, the Court, the
18 United States District Court is again in session.

19 Please be seated.

20 THE COURT: All right. So we have had a request for a
21 readback. You have already shared that with them, I assume,
22 Madam Clerk.

23 DEPUTY CLERK: Yes.

24 THE COURT: We can bring in the jury and we have our
25 court reporter ready to proceed. So go ahead.

1 (Jury present)

2 THE COURT: Go ahead and be seated, everyone. I
3 understand, ladies and gentlemen, you have have asked for a
4 readback of certain testimony, and we have our court reporter
5 here in the courtroom. The parties asked to be present for
6 this, so I'm present too. And you can listen to all of this
7 and then we will excuse you once again.

8 And so whenever you're ready, Madam Court Reporter.
9 It's DEA Agent Carr.

10 (Court Reporter read back Agent Carr's entire
11 testimony)

12 (Jury absent)

13 THE COURT: Very good. We can go off record then at
14 this time.

15 (Recessed from 2:14 p.m. to 4:16 p.m.)

16 (Jury absent)

17 DEPUTY CLERK: All rise. Her Honor, the Court, the
18 United States District Court is again in session.

19 Please be seated.

20 THE COURT: All right. We received a note that the
21 jury has reached a verdict, so Madam Clerk, you can bring them
22 in if you would, please.

23 (Pause)

24 (Jury present)

25 THE COURT: All right. Please be seated.

1 The clerk is handing me the verdict from the jury, and
2 I will review it.

3 (Pause.)

4 THE COURT: It appears to be in order. So I will
5 publish the verdict at this time.

6 With regard to Count 1, we, the jury, unanimously find
7 the defendant, Junior Gufatasi Tulali, guilty of distribution
8 of fentanyl in violation of Title 21 United States Code
9 Sections 841(a)(1) and (b)(1)(C) as charged in Count 1 of the
10 indictment.

11 The jury proceeded to Count 2 as instructed as
12 follows:

13 We, the jury, unanimously find the fentanyl
14 distributed by Junior Gufatasi Tulali resulted in the death of
15 Jacob Lee as charged in Count 1, and the jury answered yes.

16 And this appears to be signed and dated by the
17 foreperson.

18 And have I read that correctly?

19 FOREPERSON: Yes.

20 THE COURT: All right. Either side can ask to poll
21 the jury. What that means is that the courtroom deputy would
22 ask each juror individually if these were your true and correct
23 verdicts. Does the government seek to poll the jury?

24 MS. WEBER: Yes, Your Honor.

25 THE COURT: I would ask Madam Clerk to do so.

1 BY THE DEPUTY CLERK:

2 Q Juror No. 1, is this your true verdict?

3 A Yes, it is.

4 Q Juror No. 2, is this your true verdict?

5 A Yes, it is.

6 Q Juror No. 3, is this your true verdict?

7 A Yes, it is.

8 Q Juror No. 4, is this your true verdict?

9 A Yes, it is.

10 Q Juror No. 5, is this your true verdict?

11 A It is.

12 Q Juror No. 6, is this your true verdict?

13 A Yes, it is.

14 Q Juror No. 7, is this your true verdict?

15 A Yes.

16 Q Juror No. 8, is this your true verdict?

17 A Yes.

18 Q Juror No. 9, is this your true verdict?

19 A Yes, it is.

20 Q Juror No. 12 --

21 A Yes, it is.

22 Q -- is this your true verdict?

23 A Yes, it is.

24 Q Juror No. 13?

25 A Yes, it is.

1 Q And Juror No. 14, is this your true verdict?

2 A Yes.

3 DEPUTY CLERK: So say you one, so say you all. Your
4 Honor, the jurors have been polled and all have answered in the
5 affirmative.

6 THE COURT: Ladies and gentlemen, normally at this
7 stage in the proceedings I would ask the lawyers if there was
8 any reason I couldn't discharge you, but there is actually in
9 this particular case one additional matter that I will need for
10 you to consider that is distinct from the questions that you
11 have been presented. It should require considerably less
12 evidence and time to present, but at this point what I'm going
13 to do is briefly excuse you so I can confer with the attorneys
14 on that topic and we'll get you back in here as soon as
15 practicable to discuss where we proceed in the next 5 to
16 10 minutes, have you back in the courtroom.

17 I will excuse you to the jury room at this time, and
18 we'll get you back in here as soon as practicable.

19 (Jury absent)

20 THE COURT: Thank you. All right. Please be seated.
21 The jury has left the courtroom. In terms of presenting
22 additional evidence for the government, Ms. Weber, what's the
23 plan from your perspective?

24 MS. WEBER: We have the certificate of judgment and a
25 902(11) and (13) certificate with the Bureau of Prisons

1 records, so both are self-authenticating. The plan would be to
2 admit them, have a brief closing argument and --

3 THE COURT: Have you provided those to the defense?

4 MS. WEBER: Yes.

5 THE COURT: Any disagreement with that approach?

6 MR. CAMIEL: No disagreement with the approach. After
7 the government presents the evidence, though, and before it's
8 argued to the jury, once the government closes, I would have a
9 motion.

10 THE COURT: Very good. We can do that. So ready to
11 proceed on that?

12 MS. WEBER: I would just have to go run to the office,
13 but I'll be ready in a few minutes.

14 THE COURT: Back within five?

15 MS. WEBER: Yes.

16 THE COURT: Very good. We'll go off record then.

17 DEPUTY CLERK: All rise. This matter stands in a
18 brief recess.

19 (Recessed from 4:23 p.m. to 4:32 p.m.)

20 (Jury absent)

21 DEPUTY CLERK: All rise. Her Honor, the Court, the
22 United States District Court is again in session.

23 Please be seated.

24 THE COURT: We are back on record here. Ready to
25 proceed, Ms. Weber?

1 MS. WEBER: Yes, Your Honor.

2 THE COURT: Mr. Camiel?

3 MR. CAMIEL: Yes.

4 THE COURT: So let's bring the jury in. If you wanted
5 to make a very brief opening statement and proceed to the
6 evidence, you can do so.

7 Do you seek to make an opening statement as well?

8 MR. CAMIEL: No.

9 (Jury present)

10 THE COURT: Please be seated, everyone.

11 We are now going to proceed to the second and final
12 phase of this trial, and we may well be able to conclude today,
13 but if we're not, that's fine too, we can conclude on Monday.

14 So I will allow each side an opportunity to make a
15 brief statement of what this topic is about for you to
16 consider. Actually, I could just go ahead and read the
17 instruction at this point in time, might make the most sense.

18 I'll read you instruction 25 and 26 at this time and
19 then we can proceed from there.

20 Madam Clerk, I would ask you to hand out the set of
21 instructions that we gave you.

22 Looks like everybody has got a copy there. So this
23 picks up right where we left off the next instruction.

24 This is instruction 25. Now that you have completed
25 your initial deliberations, there is one additional matter for

1 you to consider. In this case, a portion of the indictment not
2 previously discussed at the trial alleges that before
3 committing the offense charged in Count 1, the defendant had
4 been convicted of a serious drug felony. The government may
5 now present evidence to you as this count.

6 The instructions previously given to you concerning
7 your consideration of the evidence, the credibility of the
8 witnesses, your duty to deliberate together and the necessity
9 of a unanimous verdict apply during your deliberations as to
10 this count. In your deliberations you may consider any
11 evidence admitted before or after your previous deliberations,
12 including witness testimony, exhibits and stipulations.

13 But I remind you that the lawyers' statements are not
14 evidence. You should not reconsider whether the defendant is
15 guilty or not guilty on Count 1. Your previous verdict is
16 final.

17 Instruction 26 states: The indictment alleges that
18 before committing the offense charged in Count 1, the defendant
19 had been convicted of a serious drug felony for which he served
20 a term of imprisonment of more than 12 months and was released
21 within 15 years of commencing the conduct charged in Count 1.

22 For you to find this fact, the government must prove
23 each of the following elements beyond a reasonable doubt:

24 First, that before committing the offense charged in
25 Count 1, the defendant had been convicted of possession with

1 the intent to distribute cocaine base in violation of Title 21
2 of the United States Code Section 841(a)(1).

3 Second, that the defendant served a term of
4 imprisonment of more than 12 months for that conviction.

5 And third, that the defendant was released from the
6 term of imprisonment imposed for that conviction within
7 15 years of the commencement of the offense charged in Count 1.

8 Finally, instruction number 27: Another verdict form
9 has been prepared for you. You will each receive your own copy
10 of the verdict form, but the goldenrod-colored verdict form is
11 the official verdict form that you will return to the Court.

12 After you have reached unanimous agreement on a
13 verdict, your foreperson should complete the golden-colored
14 verdict form according to your deliberations, sign and date it,
15 and advise the clerk that you're ready to return to the
16 courtroom.

17 I would ask Madam Clerk now to hand out the verdict
18 form for this phase of the trial, and then we'll proceed with
19 the government's evidence. Take a moment to review that
20 verdict form, ladies and gentlemen, and then we'll continue on.

21 Take a moment, if you would, and read that through.
22 Everybody had a chance to look that over?

23 Ms. Weber, do you seek to present any evidence on this
24 count on this issue?

25 MS. WEBER: Yes, Your Honor.

1 THE COURT: Go right ahead.

2 MS. WEBER: Your Honor, I have what's been previously
3 marked as Government's Exhibit 22. It's the certified judgment
4 of conviction from the District Court of Hawaii. Government
5 moves to admit under 902(1) or (2).

6 THE COURT: Any objection there?

7 MR. CAMIEL: No.

8 THE COURT: 22 is admitted.

9 (Exhibit 22 admitted)

10 MS. WEBER: I also have Exhibit 53.

11 MR. CAMIEL: We would object to counsel describing
12 what the document is.

13 MS. WEBER: Exhibit 53 I would move into evidence
14 under 902(11) and (13), with the certificate provided to the
15 Court.

16 MR. CAMIEL: There is no objection as to that
17 document.

18 THE COURT: 53 is admitted.

19 (Exhibit 53 admitted)

20 THE COURT: Any additional evidence from the
21 government?

22 MS. WEBER: No, Your Honor.

23 THE COURT: Any from the defense?

24 MR. CAMIEL: No, Your Honor.

25 THE COURT: Do you seek to make a brief closing

1 argument on this topic?

2 MS. WEBER: I'm just going to from Exhibit 22. It's a
3 judgment in a criminal case, *United States of America versus OJ*
4 *Tulali*, Case 1:95-cr-01095-001, Title and Section 21 U.S.C.
5 841(a)(1).

6 "Nature of offense: Possessed with intent to
7 distribute substance containing cocaine base, schedule two.
8 Date of offense concluded 10-26-1995. Date of imposition of
9 judgment, 5-20-1996.

10 "The defendant is hereby committed to the custody of
11 the United States Bureau of Prisons to be imprisoned for a
12 total term of 292 months."

13 MR. CAMIEL: Your Honor, before counsel reads from the
14 other document, I have a motion.

15 THE COURT: All right. Do you want to take that up in
16 a sidebar here?

17 MR. CAMIEL: Sure.

18 THE COURT: Let's do that.

19 (Begin bench conference)

20 THE COURT: Go ahead, Mr. Camiel.

21 MR. CAMIEL: Your Honor, the government has presented
22 its evidence and rested as to this phase, and I'm going to move
23 to dismiss because --

24 THE COURT: The enhancement?

25 MR. CAMIEL: -- the enhancement, yes. The document

1 that they are -- this is as to the third element, release
2 within 15 years. And the document that they are introducing is
3 a sentencing monitoring computation data document that does not
4 indicate when he was released. It indicates when he was
5 scheduled for release, but that's all it says. It never
6 indicates when he was released.

7 THE COURT: Can I see it? I'm sorry to take your
8 copy. I should have brought it out here.

9 MR. CAMIEL: That's the second page.

10 THE COURT: Was scheduled for release 12-31 -- I
11 thought there was another page I was looking at, where it
12 talked about serving 99 percent of the time.

13 MS. WEBER: Your Honor, there was a sentence reduction
14 after the 2011, and that's taken into account. It says, "7-20
15 jail credit updated to correct sentence recalculated following
16 court order in relation to changes and sentencing guidelines,
17 crack cocaine, time reduced from 292 to 235 months."

18 So the release date, I believe, was 12-31-2012, unless
19 defense has evidence that there was another release date, then
20 they are free to present that.

21 THE COURT: The motion is made, but it is denied which
22 side can argue what's here and what's not, but the exhibit has
23 been admitted, the government is going to rely on it, I'll
24 allow that, and then you can make your point to the jury with
25 your document that it's inadequate to make that finding beyond

1 a reasonable doubt. All right. Very good. Go ahead.

2 (End bench conference)

3 THE COURT: All right. Please go ahead, Ms. Weber.

4 MS. WEBER: I'm going to read from Government Exhibit
5 53. It's a document from the Bureau of Prisons. It states at
6 the top, "OJ Tulali; date of birth, January 15, 1976; court of
7 jurisdiction, Hawaii; docket number 1:95-cr-01095-001, Judge
8 Ezra; date committed 6-25-1996."

9 On the third and last page of the document, it states,
10 "Sentence recalculated following court order in relation to
11 changes in sentencing guidelines, crack cocaine. Time reduced
12 from 292 to 235 months."

13 The actual satisfaction date, 12-31-2012, which is
14 less than 15 years before the instant offense, which was
15 committed on October 15th of 2020.

16 THE COURT: Thank you, Ms. Weber.

17 Mr. Camiel, go ahead, please.

18 MR. CAMIEL: Ladies and gentlemen, the only comments
19 that I'll make to you are that the document submitted by the
20 government regarding the time calculation for Mr. Tulali does
21 not indicate when he was actually released. It indicates what
22 his sentence was, but it doesn't indicate when he was actually
23 released, so there is no evidence for you to consider as to
24 whether he was released early or whether he served out the full
25 term as indicated here. And the government is required to

1 prove when he was actually released from custody, and they have
2 not done that, and, therefore, you should not be finding this
3 enhancement committed.

4 THE COURT: Thank you, Mr. Camiel.

5 THE COURT: Any rebuttal at all?

6 MS. WEBER: Yes, Your Honor.

7 Even with the sentence reduction, the defendant
8 received 232 months. Even if that was significantly less, it
9 was still within 15 years.

10 THE COURT: All right. Thank you, Counsel.

11 Ladies and gentlemen, you can now retire back to the
12 jury room. We'll get these exhibits to you as soon as
13 practicable and the verdict form the clerk has as well. And
14 we'll get that to you as soon as we can. You may all be excused
15 at this time.

16 (Jury absent)

17 THE COURT: Please be seated.

18 Anything else to address at this time, Ms. Weber?

19 MS. WEBER: No, Your Honor.

20 THE COURT: Anything else, Mr. Camiel?

21 MR. CAMIEL: No, Your Honor.

22 THE COURT: You wanted to make the motion. I'm sorry.
23 Yes, go right ahead.

24 MR. CAMIEL: I would move to dismiss the enhancement
25 based on insufficiency of evidence presented by the government

1 as to when Mr. Tulali was actually released. They presented a
2 judgment indicating what his sentence was. They presented a
3 sentence monitoring computation data document, which just
4 calculates his time and calculates a scheduled release date,
5 but it doesn't indicate when he was actually released and
6 whether he may have been released earlier than that.

7 It simply doesn't say when he left custody of the
8 Bureau of Prisons, and the jury is required to find that he
9 was released from the term of imprisonment imposed for that
10 conviction within 15 years.

11 This document leaves open the possibility that he
12 could have been released earlier. It just indicates what the
13 scheduled release date was, but says nothing about when he
14 actually left Bureau of Prisons custody.

15 THE COURT: All right. The motion is denied, because
16 I think your concern goes to the weight, whether it's
17 sufficient beyond a reasonable doubt. I think a reasonable
18 jury could read the term actual satisfaction date of 12-31-2012
19 to constitute the date of release that's consistent or closely
20 consistent with the statutory release date on this form of
21 January 1, 2013, the following day, and the expiration of the
22 full term date before the sentencing reduction was 5-26-2015.

23 So the motion is denied. And the jury can assess
24 whether it's been proven beyond a reasonable doubt with the BOP
25 record.

1 So anything further, Mr. Camiel?

2 MR. CAMIEL: No, Your Honor.

3 THE COURT: Very good. We'll go off record.

4 DEPUTY CLERK: All rise. This matter is in a brief
5 recess.

6 (Recessed from 4:50 p.m. to 5:22 p.m.)

7 (Jury absent)

8 DEPUTY CLERK: All rise. Her Honor, the Court, the
9 United States District Court is again in session.

10 Please be seated.

11 THE COURT: All right. We have a note from the jury
12 that they have reached a verdict, so Madam Clerk, if you could
13 bring them in, please.

14 (Pause)

15 (Jury present)

16 THE COURT: Please be seated, everyone. I understand,
17 ladies and gentlemen, you have reached a verdict in the second
18 phase; is that correct?

19 FOREPERSON: That's correct.

20 THE COURT: I would ask our courtroom deputy to go
21 retrieve that. Very good.

22 All right. And it appears to be in order. I'll read
23 it as follows.

24 For phase two: We, the jury, unanimously find that
25 before the defendant, Junior Gufatasi Tulali, committed the

1 offense charged in Count 1, he had been previously convicted of
2 possession with the intent to distribute cocaine base in
3 violation of 21 U.S.C. Section 841(a)(1), and the jury circled
4 yes.

5 The jury went to question two, as instructed. We, the
6 jury, unanimously find that the defendant, Junior Gufatasi
7 Tulali, served a term of imprisonment of more than 12 months
8 for that conviction, and the verdict form indicates yes.

9 We, the jury, unanimously find that the defendant,
10 Junior Gufatasi Tulali, was released from this term of
11 imprisonment within 15 years of the commencement of the offense
12 charged in Count 1 of the indictment, and the jury has circled
13 yes. And that appears to be signed and dated today.

14 Have I read that correctly?

15 FOREPERSON: Yes.

16 THE COURT: Do you seek to poll the jury?

17 MS. WEBER: No, Your Honor.

18 THE COURT: I'm sorry?

19 MS. WEBER: No, Your Honor.

20 THE COURT: Do you seek to poll the jury?

21 MR. CAMIEL: No, Your Honor.

22 THE COURT: Well, then, any reason any reason this
23 jury cannot be discharged at this time?

24 MS. WEBER: No, Your Honor.

25 MR. CAMIEL: No.

1 THE COURT: That is what we will do. And we'll be
2 issuing an order with regard to further proceedings, but
3 anything else to take up at this time?

4 MS. WEBER: Not at this time.

5 MR. CAMIEL: No, Your Honor. Thank you.

6 THE COURT: Ladies and gentlemen, you are all
7 discharged from the jury at this time. I thank you for your
8 service. I'm going to come in, and you're free to remain or
9 free to go about your way, but answer any questions and
10 personally thank you for your service here.

11 And we'll be sure to inform the other two jurors as
12 well that they are discharged, free to talk about the case or
13 not or do research or not.

14 Anyway, thank you again for your service and you can
15 all be excused at this time.

16 Thank you, counsel. We'll go off record.

17 DEPUTY CLERK: All rise. The this matter is now
18 adjourned. This court now stands adjourned subject to call.

19 (Proceedings concluded at 5:26 p.m.)
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1 CERTIFICATE

2 I, Sonja L. Reeves, Federal Official Court Reporter in and
3 for the United States District Court of the District of
4 Columbia, do hereby certify that the foregoing transcript is a
5 true and accurate transcript from the original stenographic
6 record in the above-entitled matter and that the transcript
7 page format is in conformance with the regulations of the
8 Judicial Conference of the United States.

9 Dated this 13th day of December, 2024.

10 /s/ Sonja L. Reeves
11 SONJA L. REEVES, RDR-CRR
12 FEDERAL OFFICIAL COURT REPORTER
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